



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **202014022**

Release Date: 4/3/2020

UIL Number: 501.00-00, 501.03-30

Date:

January 7, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date:
October 9, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Date
E = Association
f dollars = Amount
g dollars = Amount
h percent = Number

UIL:
501.00-00
501.03-30

Dear

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You were incorporated in the state of B on C for social and civic purposes. You have never officially requested a ruling on your exempt status until now, but your exemption under IRC Section 501(c)(3) was automatically revoked on D due to your failure to file a return for three consecutive tax periods. You submitted Form 1023-EZ requesting reinstatement of your exemption.

You attested on Form 1023-EZ that you are organized and operated exclusively to further charitable and educational purposes. You also attested that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3).

During review of your Form 1023-EZ, detailed information was requested supplemental to your attestations. Your Articles of Incorporation state that you were formed for social and civic purposes. More specifically, it states that you were established to host an annual community event of truck and tractor pullers who enjoy entertaining the local and surrounding communities.

In order to fulfill your mission, you host an annual community event. Your main exhibition is a series of truck and tractor pulling events. You charge each entrant (truck or tractor pullers) f dollars to compete in your events. You charge spectators g dollars to watch the event. Of the entry money, h percent is used to provide prizes for the winners of your events.

Your other expenses include advertising, office supplies, signage, repairs, maintenance (of sleds to pull) and a payment to the E Association.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to qualify under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) states that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in IRC Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 67-216, 1967-2 C.B. 180, describes a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products qualified for exemption from federal income tax under IRC Section 501(c)(3). The organization's activities and exhibits are planned and managed by or in collaboration with person whose business it is to inform and instruct farmers and the general public on agricultural matters (i.e., home demonstration agents, county agricultural agents), and the resulting displays are designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo are incidental to the fair's overall educational purpose.

Rev. Rul. 77-366, 1977-2 C.B. 192, provides that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under IRC Section 501(c)(3). In addition to the usual cruise activities, the programs conducted on each cruise include a schedule of lectures, discussion groups, and special interest workshops on religious topics, at which attendance is not required. The organization accomplished both charitable and non-charitable purposes through its cruises.

In Better Business Bureau of Washington, D.C., Inc v. United States, 326 U. S. 279 (1945), the Supreme Court interpreted the requirement in IRC Section 501(c)(3) that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. This plainly means that the

presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In Minnesota Kingsmen Chess Association v. Commissioner, T.C. Memo 1983-495 (1983), the organization sponsored chess tournaments, provided chess magazines and books to libraries, offered free chess lessons, and published a newsletter that primarily contained reports of past tournaments and announcements of future ones. The petitioner sought exemption under IRC Section 501(c)(3) because its purposes and activities were described as educational. The court found that the promotion of chess tournaments furthered a substantial recreational purpose, even though individual participants may have received some educational benefits.

In St. Louis Science Fiction Limited v. Commissioner, 49 TCM 1126, 1985-162 (1985) the Tax Court held that a science fiction society failed to qualify for tax-exempt status under IRC Section 501(c)(3). Although many of the organization's functions at its annual conventions (the organization's principal activity) were educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed to meet both requirements, as explained below.

Your Articles of Incorporation do not limit your purposes to exclusively IRC Section 501(c)(3) purposes. As a result, you have not satisfied the organizational test required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv).

You are also not described in IRC Section 501(c)(3) because you fail the operational test. Specifically, the facts show you are not operated exclusively for Section 501(c)(3) purposes as required by Treas. Reg. Section 1.501(c)(3)-1(c)(1), but for the purpose of furthering social and recreational purposes.

You are unlike the organization granted exemption in Rev. Rul. 67-216. In that ruling the recreational features of the organization's events were incidental to their overall educational purpose. There is no evidence that you have any educational or other exempt element to your operations. You are organized and operated to provide recreation for the community. Similar to the organization in Rev. Rul. 77-366, you have a substantial recreational purpose, which precludes exemption under IRC Section 501(c)(3).

As noted in Better Business Bureau of Washington D.C., exemption under IRC Section 501(c)(3) cannot be granted when an organization has a substantial non-exempt purpose. This is further clarified in both Minnesota Kingsmen Chess Association and St. Louis Science Fiction Limited, where the substantial recreational purposes prohibited exemption under IRC Section 501(c)(3). As your purposes are entirely recreational and social, you are not exempt under Section 501(c)(3).

Conclusion

Based on the information provided, you do not qualify for exemption because you are neither organized nor operated exclusively for exempt purposes described in IRC Section 501(c)(3). Your organizing document does not satisfy the organizational test and your recreational and social activities further substantial, non-exempt purposes. Therefore, you do not qualify for exemption under Section 501(c)(3).

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Decision on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements